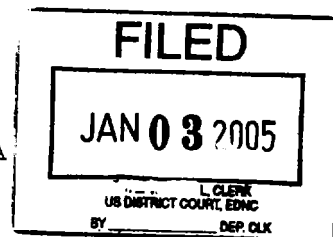


UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION



NO. 5:04-CR-211-BO(1)

UNITED STATES OF AMERICA                    )  
                                                  ) GOVERNMENT RESPONSE  
                                                  ) DEFENDANT'S NOTICE OF INTENT  
                                                  ) TO ASSERT PUBLIC AUTHORITY  
                                                  ) DEFENSE AND REQUEST FOR WITNESS  
                                                  ) INFORMATION  
DAVID A. PASSARO                            )           (Under Seal)

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, in accordance with Fed R. Crim P. 12.3(a)(3) and 12.3(a)(4)(A), hereby files this response to defendant's notice of his intent to assert the public authority defense and requests the appropriate witness information related to the defense.

1. On November 12, 2004, the Defendant filed his Notice of Intent to Assert Public Authority Defense. Along with this notice, defendant filed several other motions involving the discovery and disclosure of sensitive information related to his public authority defense.

2. Based on all the information the Government has examined to date, and in accordance with Fed R. Crim P. 12.3(a)(3), the Government denies that the defendant exercised the public authority identified in his notice.

3. Additionally, in accordance with Fed R. Crim P. 12.3(a)(4)(A) the Government hereby requests the defendant disclose the name, address and telephone number of each witness the

Unsealed 4/12/05  
K. Boyle w/prop. M+order to Seal

72

defendant intends to rely on to establish the public authority defense.

Respectfully submitted, this 3<sup>rd</sup> day of January, 2005.


FRANK D. WHITNEY  
United States Attorney

*Jim Barli for*  
BY: JAMES A. CANDELMO  
Assistant United States Attorney  
Criminal Division

CERTIFICATE OF SERVICE

This is to certify that I have this 3<sup>d</sup> day of January, 2005, served a copy of the foregoing Response to Defendant's Notice to Assert Public Authority Defense in this action via courier as follows:

Thomas P. McNamara, Esq.  
Federal Public Defender's Office  
Raleigh, North Carolina

  
JAMES A. CANDELMO  
Assistant United States Attorney  
Criminal Division